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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN M. RATERMAN and PAULA E. RUSE

Appeal 2008-1533
Application 10/699,301
Technology Center 3600

Decided: March 12, 2008

Before DEMETRA J. MILLS, LORA M. GREEN, and
RICHARD M. LEOVITZ, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-14. We have jurisdiction under 35 U.S.C. § 6(b). Claims 1 and 8 are representative of the claims on appeal, and read as follows:

1. An apparatus for mounting an adhesive dispenser, comprising:
 - a) a base defined by at least one sidewall and a top surface, said base including at least one of:
 - i) a storage bay formed through said sidewall,
 - ii) a drawer slidably coupled to said base, through said sidewall, for movement between an open position wherein said drawer extends outwardly of said sidewall and a closed position wherein said drawer is received within said base,
 - iii) a shelf slidably coupled to said base for movement between an open position wherein said shelf extends outwardly of said sidewall and a closed position wherein said shelf is received within said base, and
 - iv) a swing-out plate pivotally coupled to said base, through said sidewall, for movement between an open position wherein said plate extends outwardly of said sidewall and a closed position wherein said plate is received within said base; and
 - b) a coupling member proximate said top surface of said base and configured to removably secure the adhesive dispenser to said top surface.

The Examiner relies on the following references:

Hunter	US 1,782,898	Nov. 25, 1930
Beeh	US 2,252,542	Aug. 12, 1941
Munson	US 2,283,690	May 19, 1942
Lyons	US 2,956,367	Oct. 18, 1960
Woodlief	US 6,740,851 B2	May 25, 2004

We affirm.

DISCUSSION

We first note that Appellants do not argue the claims separately for any of the rejections. Thus, the claims stand or fall together, and we focus our analysis on claim 1, and the remainder of the rejected claims for each rejection stand or fall with claim 1. 37 CFR § 41.37(c)(1)(vii).

Claims 1, 2, and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Munson.

Munson is cited for teaching an apparatus comprising a base with a sidewall and top surface, the base also including an opening, a drawer, and a coupling member/flange proximate to the top surface and configured to secure a device to the top surface (Ans. 3). The Examiner notes that “the dispenser is not positively being claimed in combination with the apparatus.” (*Id.*)

Claims 1, 6, and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lyons.

Lyons is relied upon for teaching an apparatus comprising a base with a sidewall and top surface, the base also including a drawer, and a coupling member/flange with horizontal leg proximate to the top surface and configured to secure a device to the top surface (Ans. 3-4). The Examiner notes that “the dispenser is not positively being claimed in combination with the apparatus.” (*Id.* at 4.)

We recognize that in order for a prior art reference to anticipate a claimed invention, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001).

Appellants argue with respect to both Munson and Lyons that both references “are directed to bases for supporting telephones thereon,” asserting that the devices taught by the references do not teach “a coupling member proximate said top surface of said base and configured to removably secure the adhesive dispenser to said top surface” as required by

element b) of claim 1 (Br.¹ 6-7.) Appellants argue that the Examiner asserts that Munson and Lyons inherently include coupling members configured to secure an adhesive dispenser thereon, but has failed to cite any reference that teaches or suggests that such a coupling member is necessarily present in the devices of Munson and Lyons (*id.* at 7).

Munson teaches the use of four spring clips (20) spaced circumferentially around the walls of the depression for holding the telephone (Munson, col. 2, ll. 45-53). Lyons teaches the use of a coupling member/flange with horizontal leg (Fig. 14, 59) which wedge between the engaged pads and the telephone base (Lyons, col. 4, ll. 19-25). As noted by the Examiner, persons of ordinary skill in the art would have known, as evidenced by Beeh and Woodlief, that adhesive dispensers come in various shapes and sizes (Ans. 5). Thus it was reasonable for the Examiner to find that the coupling members/flanges taught by Munson and Lyons could also be used to secure an adhesive dispenser. Moreover, Appellants have not provided any evidence that the coupling members/flanges of Munson and Lyons would not be capable of securing an adhesive dispenser. *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990). (“[W]hen the PTO shows sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not.”).

Thus, we find that Munson and Lyon both anticipate claim 1, and the rejections are affirmed as to all of the rejected claims.

Claims 1-14 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Woodlief and Hunter.

¹ All references to the Brief are to the Amended Brief on Appeal dated September 18, 2006.

Woodlief is cited for teaching an apparatus comprising a base with a sidewall and a top surface, wherein the base includes a coupling member proximate to the top surface for securing an adhesive dispenser thereto (Ans. 4). Woodlief is also relied upon for teaching that the coupling member includes a plate and a first and second dispenser engaging members with various flanges (*id.*). The Examiner notes that “Woodlief fails to teach that the base includes a drawer, sliding shelf or swing-out plate.” (*Id.*)

Hunter is cited for teaching a base for a machine that includes a drawer (*id.*). The Examiner thus concludes that it “would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Woodlief by using an alternate base therein, i.e. using the base of Hunter instead . . . to provide a base having the additional feature of article storage.” (*Id.*)

The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) secondary considerations of nonobviousness, if any. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). The Supreme Court has recently emphasized that “the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 1739. Moreover, an “[e]xpress suggestion to substitute one equivalent for another need not be

present to render such substitution obvious.” *In re Fout*, 675 F.2d 297, 301 (CCPA 1982).

Appellants argue that there is no teaching or suggestion to modify Woodlief to include a base as taught by Hunter (Br. 8). Appellants assert further that the Examiner has engaged in hindsight reconstruction using their own disclosure (*id.*).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 127 S. Ct. at 1739. Moreover, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” *Id.* at 1742. As demonstrated by Hunter (as well as Munson and Lyons), it is well known to include drawers for storage in bases for many different devices. Thus, we conclude that the Examiner has set forth a *prima facie* case that the subject matter of claim 1 would have been obvious over the combination of Woodlief and Hunter that has not been adequately rebutted by Appellants, and the rejection is affirmed as to all of the rejected claims.

CONCLUSION

In summary, we find that the Examiner has set forth a *prima facie* case that claims 1, 2, and 6 are anticipated by Munson, and that claims 1, 6, and 7 are anticipated by Lyons that has not been rebutted by Appellants. In addition, we also agree with the Examiner’s conclusion that claims 1-14 are rendered obvious by the combination of Woodlief and Hunter.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

Appeal 2008-1533
Application 10/699,301

AFFIRMED

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